

EXHIBIT 79

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) Case No.
et al.,) 1:23-cv-00108-LMB-JFA
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendant.)

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VIDEOTAPED 30(b)(6) DEPOSITION OF
UNITED STATES ARMY
through the testimony of
COLONEL JOHN HORNING
September 29, 2023
1:06 p.m.

Reported by: Bonnie L. Russo
Job No. 6105371

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<p style="text-align: right;">Page 2</p> <p>1 Videotaped 30(b)(6) Deposition of 2 United States Army through the testimony of 3 Colonel John Horning held at: 4 5 6 Paul, Weiss, Rifkind, Wharton & Garrison, LLP 7 2001 K Street, N.W. 8 Washington, D.C. 9 10 11 12 13 14 15 16 17 18 Pursuant to Notice, when were present on behalf 19 of the respective parties: 20 21 22</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (CONTINUED): 2 3 Also Present: 4 Mohamed Al-Darsani, United States Army 5 Orson Braithwaite, Videographer 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 On behalf of the Plaintiffs: 4 KATHERINE CLEMONS, ESQUIRE 5 ALVIN CHU, ESQUIRE 6 CHASE PRITCHETT, ESQUIRE 7 UNITED STATES DEPARTMENT OF JUSTICE 8 450 Fifth Street, N.W. 9 Washington, D.C. 20530 10 katherine.clemons@usdoj.gov 11 alvin.chu@usdoj.gov 12 chase.pritchett@usdoj.gov 13 14 On behalf of the Defendant: 15 MARTHA L. GOODMAN, ESQUIRE 16 LEAH HIBBLER, ESQUIRE 17 PAUL, WEISS, RIFKIND, WHARTON & 18 GARRISON, LLP 19 2001 K Street, N.W. 20 Washington, D.C. 20006 21 mgoodman@paulweiss.com 22 lhibbler@paulweiss.com</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X 2 EXAMINATION OF COLONEL JOHN HORNING PAGE 3 BY MS. GOODMAN 9 4 BY MS. CLEMONS 104 5 6 7 EXHIBITS 8 Exhibit 165 Personnel Consulted 36 9 Exhibit 166 E-Mail 64 Attachment 10 ARMY-ADS-00000064495-553 11 Exhibit 167 E-Mail Chain dated 7-2-21 71 Attachment 12 ARMY-ADS-0000245860-871 13 Exhibit 168 E-Mail Chain dated 6-21-22 80 Attachment 14 ARMY-ADS-0000007763-777 15 Exhibit 169 E-Mail Chain dated 8-19-22 83 ARMY-ADS-0000069378-379 16 17 18 19 20 21 22</p>

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<p>1 other companies are also acquiring ads so the</p> <p>2 dynamics of the marketplace make an IDIQ a</p> <p>3 little bit more appropriate of an acquisition</p> <p>4 vehicle.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Turning to the page ending in 13,</p> <p>7 the little Bates numbers at the bottom.</p> <p>8 A. Okay.</p> <p>9 Q. Item No. 0023. Do you see where I</p> <p>10 am at the top of the page?</p> <p>11 A. I do.</p> <p>12 Q. And that item number is a CLIN.</p> <p>13 Yes?</p> <p>14 MS. CLEMONS: Objection. Form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: One second. Let me</p> <p>17 just review. Yes.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And CLIN 23 applies to the purchase</p> <p>20 of national and local media under this</p> <p>21 contract; is that correct?</p> <p>22 A. Yes.</p>	<p>1 different from each year to year. The only</p> <p>2 thing within the IDIQ is there is just an</p> <p>3 overall not to exceed.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And that --</p> <p>6 A. -- but it could be divided into the</p> <p>7 various areas or not spent at all. It just</p> <p>8 cannot exceed a certain amount over the course</p> <p>9 of a number of years.</p> <p>10 Q. Is there any other line item, CLIN,</p> <p>11 contract line item number --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- under which digital advertising</p> <p>14 can be purchased other than 23?</p> <p>15 MS. CLEMONS: Objection. Form.</p> <p>16 THE WITNESS: I think that depends</p> <p>17 on how we're defining digital advertising.</p> <p>18 Only in that some people may see like social</p> <p>19 media specifically as digital advertising even</p> <p>20 if we don't use it in that -- necessarily in</p> <p>21 that context, and social media is a separate</p> <p>22 task order.</p>
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<p>1 Q. And this contract sets -- does not</p> <p>2 set a price, does not set a unit, does not set</p> <p>3 a maximum of purchase, correct?</p> <p>4 MS. CLEMONS: Objection. Form.</p> <p>5 THE WITNESS: This particular</p> <p>6 section of the IDIQ does not identify, and I</p> <p>7 think that's the -- that's sort of the</p> <p>8 flexibility of the IDIQ because this particular</p> <p>9 item here will then have a separate task order.</p> <p>10 That's the national media talent and</p> <p>11 furnishings task order, which is then awarded</p> <p>12 at a specific amount but the IDIQ doesn't</p> <p>13 indicate or designate what that would be, and</p> <p>14 that's part of the -- I guess the flexibility</p> <p>15 of this kind of a contract, is that it doesn't</p> <p>16 have to indicate that number.</p> <p>17 That can be done on the task orders</p> <p>18 and the task orders are then renewed each year</p> <p>19 as we previously discussed, and awarded then</p> <p>20 each year and so that number could change each</p> <p>21 year. And I think that's part of the flexible</p> <p>22 piece of this as well, is that it might be</p>	<p>1 I don't -- we don't consider that</p> <p>2 advertising, but some people do think</p> <p>3 anything -- anything that's the on the Internet</p> <p>4 is advertising or might bundle it together in</p> <p>5 that.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Okay. Now, if you turn to page</p> <p>8 ending in 51, this is the performance work</p> <p>9 statement.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And the performance -- performance</p> <p>13 work statement sets out the responsibilities of</p> <p>14 the contractor, correct?</p> <p>15 MS. CLEMONS: Objection. Form.</p> <p>16 THE WITNESS: Yes. The performance</p> <p>17 work statement identifies those things that the</p> <p>18 contractor will do for the army.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. And you see Number 1, that is --</p> <p>21 says: "General." Do you see where I am?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q. If you go down to the first sentence</p> <p>2 below the last bullet, where it says: "Army,</p> <p>3 civilian personnel recruiting," so just go to</p> <p>4 the sentence just below.</p> <p>5 A. Yes.</p> <p>6 Q. This says: "The government shall</p> <p>7 neither supervise contractor employees nor</p> <p>8 control the method by which the contractor</p> <p>9 performs the required tasks."</p> <p>10 A. Uh-huh.</p> <p>11 Q. Is that a true statement of the</p> <p>12 government's -- of the rules governing the --</p> <p>13 the rule that applies to the government's work</p> <p>14 under this contract?</p> <p>15 MS. CLEMONS: Objection to form.</p> <p>16 THE WITNESS: Yes, that's pretty</p> <p>17 common to see in any contract, not just this</p> <p>18 one, because ultimately a contractor who has</p> <p>19 bid and won a contract has some latitude in --</p> <p>20 in the performance of the work. I can't tell</p> <p>21 the contractor you need two people to do this.</p> <p>22 The contractor says, well, I think I can do it</p>	<p style="text-align: right;">Page 56</p> <p>1 MS. CLEMONS: Objection to form.</p> <p>2 THE WITNESS: I'm not the</p> <p>3 contracting officer, but in practice my</p> <p>4 experience has been -- the examples that --</p> <p>5 that I gave you I think would represent</p> <p>6 examples of the method.</p> <p>7 We can't tell the contractor you</p> <p>8 should have this type of internal organization</p> <p>9 or you should do this type of prework or you</p> <p>10 should use this type of, unless it's a</p> <p>11 requirement to the contract, a computer system.</p> <p>12 There could be something in the contract where</p> <p>13 you have to operate on a computer system.</p> <p>14 Maybe that's part of the contract.</p> <p>15 But sort of the administrative side</p> <p>16 of it, that's the type of things where we</p> <p>17 wouldn't tell them how many people, how often</p> <p>18 you work, when you come or you don't come, how</p> <p>19 you run your -- your leave policy or your</p> <p>20 holiday policies, things like that. That's in</p> <p>21 a sense the method in which they perform it</p> <p>22 that we would not dictate to them.</p>
<p style="text-align: right;">Page 55</p> <p>1 with one.</p> <p>2 So I can't supervise. I also can't</p> <p>3 say your person should be there eight hours a</p> <p>4 day, why are they only in the office five hours</p> <p>5 a day. That's -- I can't supervise them in the</p> <p>6 conduct of their work. The contractor has the</p> <p>7 ability so long as they are delivering to do</p> <p>8 those things. So I don't control, and -- and I</p> <p>9 am -- and in any contract, this would be very</p> <p>10 similar. I would be surprised if this sentence</p> <p>11 is not in every one where I can't tell you the</p> <p>12 method or the number of people or which</p> <p>13 computer system you'll use, Windows or Mac, for</p> <p>14 example, or whichever. That's up to the</p> <p>15 contractor so long as they are delivering the</p> <p>16 deliverables per the terms of the overall</p> <p>17 contract.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And so what else is meant by the</p> <p>20 government shall not control the method by</p> <p>21 which the contractor performance the required</p> <p>22 task?</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. Can the government dictate the</p> <p>3 method by which the advertising agency</p> <p>4 purchases paid media --</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. -- under this contract?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 Foundation.</p> <p>10 THE WITNESS: Can you be specific a</p> <p>11 little bit more on -- what do you mean the</p> <p>12 method that we purchase? Do you mean what kind</p> <p>13 of computer system is used to purchase it, or</p> <p>14 what -- if you could be a little more specific</p> <p>15 I can maybe provide a better answer.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Sure. Can the government dictate --</p> <p>18 strike that.</p> <p>19 Can the government control the</p> <p>20 method by which DDB goes out and buys digital</p> <p>21 display advertising, for example?</p> <p>22 MS. CLEMONS: Objection to form.</p>

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<p style="text-align: right;">Page 58</p> <p>1 Foundation.</p> <p>2 THE WITNESS: Part of what the --</p> <p>3 the agency pitches or any contractor pitches in</p> <p>4 pursuit of a contract is their abilities. It's</p> <p>5 there capability: What they can and can't do,</p> <p>6 how they do business, why the government even</p> <p>7 believes you could even do this contract.</p> <p>8 Obviously we wouldn't want to go</p> <p>9 with somebody who was cheap and realize, well,</p> <p>10 you don't even really have the capability to do</p> <p>11 this.</p> <p>12 And so how they purchase media is --</p> <p>13 is sort of part of what was all in -- in -- I</p> <p>14 don't want to say the pitch, but the process of</p> <p>15 evaluating their proposal writ large, which the</p> <p>16 government looked into. It looked at their</p> <p>17 capability to wit that DDB as a member of</p> <p>18 Omnicom Worldwide also had the ability to tap</p> <p>19 into a professional agency whose strength was</p> <p>20 media buying, OMD, and their processes. And we</p> <p>21 were buying into their ability to deliver what</p> <p>22 we needed, which was to buy media.</p>	<p style="text-align: right;">Page 60</p> <p>1 work statement definitions and acronyms.</p> <p>2 A. Uh-huh.</p> <p>3 Q. 2.1.3 defines --</p> <p>4 A. Yep.</p> <p>5 Q. -- contracting officer, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it's accurate that the</p> <p>8 contracting officer is the only individual who</p> <p>9 can legally bind the government, correct?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: Correct. Yes. I -- I</p> <p>12 believe as I stated it and what the actual</p> <p>13 definition per this is largely the same and</p> <p>14 intended to mean the same thing.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. You passed the test. I made you</p> <p>17 smile. Okay.</p> <p>18 2.1.4, contracting officer's</p> <p>19 representative, the COR, this -- it is</p> <p>20 accurate, sir, that the COR does not have the</p> <p>21 authority to change the terms and conditions of</p> <p>22 the contract, correct?</p>
<p style="text-align: right;">Page 59</p> <p>1 We don't necessarily dictate that</p> <p>2 you must buy it this way, on this system, on</p> <p>3 this frequency, or -- but that you have the</p> <p>4 capability demonstrated and -- and I think that</p> <p>5 everyone would agree OMD is a demonstrated</p> <p>6 capability of which to buy national media.</p> <p>7 And so understanding that they</p> <p>8 brought that and that was one of the supporting</p> <p>9 reasons of why they were even awarded the</p> <p>10 contract, because they have the capabilities,</p> <p>11 we don't then go back and tell them how to</p> <p>12 execute those things for which they have</p> <p>13 already proven an ability to do.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Can you turn to page ending in 60.</p> <p>16 MS. CLEMONS: And we've been going a</p> <p>17 little over an hour, so I think that we should</p> <p>18 probably try to take a break soon.</p> <p>19 MS. GOODMAN: Sure. Let's just try</p> <p>20 to get through this document.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. This is Section 2 of the performance</p>	<p style="text-align: right;">Page 61</p> <p>1 A. That's 100 percent correct.</p> <p>2 Q. And let's go to the next page, 61.</p> <p>3 2.1.16, which is the definition of</p> <p>4 subcontractor.</p> <p>5 A. 16. Okay.</p> <p>6 Q. It's accurate, sir, that the</p> <p>7 government does not have privity of contract</p> <p>8 with any subcontractor, correct?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: My testimony is that</p> <p>11 2.1.16, subcontractor, indeed says: "A</p> <p>12 subcontractor is one that enters into a</p> <p>13 contract with the prime contractor and that the</p> <p>14 government does not have privity of contract</p> <p>15 with the subcontractor."</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Okay. Let's go to Page 74. I am</p> <p>18 looking at 5.12. I guess we should --</p> <p>19 A. Right.</p> <p>20 Q. Part 5 starts on Page 68, and it's</p> <p>21 labeled: "Specific tasks."</p> <p>22 A. Correct.</p>

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<p>1 Q. So 5.12.1 sets forth the</p> <p>2 contractor's specific task of developing and</p> <p>3 presenting a plan for participation in the</p> <p>4 annual upfront media market, correct?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: I'm sorry. Could you</p> <p>7 say the number again because I'm not seeing</p> <p>8 what you --</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. 5.12.1.</p> <p>11 A. Oh, Point 1. Sorry.</p> <p>12 Correct.</p> <p>13 Q. Okay. And under 5.12 it's the</p> <p>14 contractor's obligation to provide the</p> <p>15 planning, execution analysis, and stewardship</p> <p>16 of all national and local media channels,</p> <p>17 including traditional, online, and emerging</p> <p>18 media platforms, correct?</p> <p>19 A. That is indeed what this contract</p> <p>20 states.</p> <p>21 It's also important to note that the</p> <p>22 task order itself and the performance work</p>	<p>1 next one ends so that they can -- so there</p> <p>2 cannot be a break. But -- but that is what</p> <p>3 indicates that that next task order you're</p> <p>4 authorized to begin work based on the PWS of</p> <p>5 that next version.</p> <p>6 MS. GOODMAN: Okay. Shall we take a</p> <p>7 break.</p> <p>8 MS. CLEMONS: Yeah.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 p.m. this ends Unit No. 1. We're off the</p> <p>11 record.</p> <p>12 (A short recess was taken.)</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 p.m. This begins Unit No. 2. We are on the</p> <p>15 record.</p> <p>16 (Deposition Exhibit 166 was marked</p> <p>17 for identification.)</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. Colonel, I am handing you Exhibit</p> <p>20 166, ARMY-ADS-64495 through 64553. And this is</p> <p>21 an e-mail produced by the government attaching</p> <p>22 a number of task orders associated with the</p>
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<p>1 statement of the task order of national media</p> <p>2 talent and furnishings will have more detail</p> <p>3 than the base IDIQ will.</p> <p>4 Q. Okay. And can you turn to page</p> <p>5 ending in 99. I am looking under H.9, annual</p> <p>6 marketing plan execution letters of technical</p> <p>7 direction procedures.</p> <p>8 Do you see where I am?</p> <p>9 A. I do.</p> <p>10 Q. What is a letter of technical</p> <p>11 direction under this contract?</p> <p>12 A. My understanding of a letter of</p> <p>13 technical direction is that once a task order</p> <p>14 has been awarded, funded, then our -- our</p> <p>15 contracting command, MICC, at Fort Knox will</p> <p>16 issue a letter of technical direction which</p> <p>17 then authorizes the beginning of work under</p> <p>18 that task order.</p> <p>19 As the task orders are sort of</p> <p>20 reauthorized or renewed each year after the</p> <p>21 period of performance -- obviously the work</p> <p>22 starts before a period of performance of the</p>	<p>1 IDIQ base contract, correct?</p> <p>2 A. Yes, that appears to be so.</p> <p>3 Q. And if we turn to page ending in</p> <p>4 64507.</p> <p>5 A. Yes.</p> <p>6 Q. And this task order is 22 pages.</p> <p>7 My question is: Do you recognize</p> <p>8 this as the task order -- the national media</p> <p>9 talent and furnishing task order?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Did the army purchase via this</p> <p>14 contract any digital programmatic display</p> <p>15 advertising?</p> <p>16 MS. CLEMONS: Objection. Form.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: I would need to see</p> <p>19 the actual media plan, whether that flowchart,</p> <p>20 firm, flex, and any invoices to know for sure.</p> <p>21 However, it's extremely likely that we did</p> <p>22 purchase display advertising through this</p>

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<p>1 Doesn't have to be. They could be two 2 different people, and right now or even since 3 -- since maybe on or about January of 2022, we 4 had specifically divided program manager to -- 5 and contracting officer's representative in 6 most all of our contracts. 7 So in this case at this time, 8 considering these dates, it's entirely 9 possible -- and indeed I believe likely -- that 10 the program manager was also the COR at the 11 time. And so, frankly, this could have been 12 one of the reasons why we had shifted to 13 changing to separate them. 14 Q. And you said that your understanding 15 after talking with your colleagues more expert 16 within the contracting is that a government 17 contractor is required to be able to pay its 18 subs regardless of whether the government has 19 paid them yet. 20 Am I recollecting that correctly? 21 A. Yes. 22 MS. CLEMONS: Objection to form.</p>	<p>1 research on. How far that extends below, I do 2 not know. 3 (Deposition Exhibit 168 was marked 4 for identification.) 5 BY MS. GOODMAN: 6 Q. Okay. I am handing you Exhibit 168, 7 ARMY-ADS-7763 through 7777. And this is an 8 e-mail chain regarding the same requests for 9 equitable adjustment that we were looking at in 10 the prior exhibit. 11 Do you see that as evident by the 12 top e-mail of this document? 13 MS. CLEMONS: Objection to form. 14 Foundation. 15 THE WITNESS: Okay. I mean, I see 16 that it's -- that it's also a request for 17 equitable adjustment, though, it's a -- it's a 18 year later. 19 BY MS. GOODMAN: 20 Q. Right. 21 A. So I assume -- I don't want to 22 assume. It could potentially be the same one.</p>
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<p>1 BY MS. GOODMAN: 2 Q. And so what is the requirement on 3 behalf of -- what is a contractor -- strike 4 that. 5 Is a contractor thus required to pay 6 its subcontractors regardless of whether the 7 government has yet paid them, meaning the 8 contractor? 9 MS. CLEMONS: Objection to form. 10 THE WITNESS: That is my 11 understanding of the requirement. 12 BY MS. GOODMAN: 13 Q. Okay. Is a subcontractor required 14 to pay a vendor regardless of whether the 15 government has yet paid out to the main, prime 16 contractor -- 17 MS. CLEMONS: Objection. 18 BY MS. GOODMAN: 19 Q. -- for such purchases? 20 MS. CLEMONS: Objection. Form. 21 THE WITNESS: That's not an area 22 that I asked or -- or was able to -- to</p>	<p>1 Q. If you turn to Page 7765. 2 A. Okay. 3 Q. You see that Mr. Green-Trueblood is 4 writing to Ron and her first sentence says: 5 "On July 2, 2021" -- 6 A. Yeah, I see that. 7 Q. -- "DDB Chicago Inc. submitted a 8 request for equitable adjustment"? 9 And that's the same date as 10 reflected in the prior exhibit? 11 A. Correct. 12 Q. Okay. So now you agree that this 13 Exhibit 168 is talking about the same REA in 14 the prior -- as in the prior exhibit? 15 A. Yes. 16 Q. Okay. And you see that DDB has 17 reduced its request for equitable -- equitable 18 adjustment by \$260,000, correct? 19 MS. CLEMONS: Objection. Form. 20 Foundation. 21 THE WITNESS: I see the line that 22 says DDB will decrease its request for</p>

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<p style="text-align: right;">Page 82</p> <p>1 equitable adjustment by \$260,000.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Okay. Does -- do you know what --</p> <p>4 whether the contracting officer accepted DDB's</p> <p>5 REA?</p> <p>6 MS. CLEMONS: Objection to form.</p> <p>7 Foundation.</p> <p>8 THE WITNESS: I do not know the</p> <p>9 ultimate determination of this particular</p> <p>10 request for equitable adjustment.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. And if you turn to page ending in</p> <p>13 7772, this is a letter from DDB to the</p> <p>14 contracting officer, correct?</p> <p>15 MS. CLEMONS: Objection. Form.</p> <p>16 Foundation.</p> <p>17 THE WITNESS: Yes. I see it's a</p> <p>18 letter from DDB to Ms. Green-Trueblood.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. And if you go under Roman I, the</p> <p>21 second paragraph where it begins: "DDB</p> <p>22 subcontractor," do you see where I am?</p>	<p style="text-align: right;">Page 84</p> <p>1 And this is an e-mail where OMD is</p> <p>2 requesting that money be moved from one bucket</p> <p>3 of digital advertising to another bucket</p> <p>4 because DDB made an error which resulted in a</p> <p>5 approximately \$26,000 overspend, correct?</p> <p>6 MS. CLEMONS: Objection to form.</p> <p>7 Foundation.</p> <p>8 THE WITNESS: I see the e-mail</p> <p>9 and -- and recognize it as a discussion between</p> <p>10 then Colonel Morris making recommendation to</p> <p>11 some of the business management team on -- on</p> <p>12 his perspective as the branch chief of our</p> <p>13 national media team on what he recommends --</p> <p>14 ultimately what he recommends, we recommend --</p> <p>15 on how to deal with an expenditure that didn't</p> <p>16 match the army-approved media plan.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. And what -- what do you understand</p> <p>19 Mr. -- or Colonel Morris to mean when he</p> <p>20 writes: "DDB made the error, and they can pay</p> <p>21 for it IMO"?</p> <p>22 MS. CLEMONS: Objection to form.</p>
<p style="text-align: right;">Page 83</p> <p>1 A. I do.</p> <p>2 Q. And this says: "DDB's subcontractor</p> <p>3 OMD USA LLC (OMD) purchased the WYW2 media for</p> <p>4 the army pursuant to the approved tactical plan</p> <p>5 with a good-faith understanding that the army</p> <p>6 would pay for the purchases it had authorized."</p> <p>7 Do you have any reason to doubt that</p> <p>8 DDB in fact -- that DDB's subcontractor OMD, in</p> <p>9 fact, purchased the media as stated in this</p> <p>10 sentence?</p> <p>11 MS. CLEMONS: Objection to form.</p> <p>12 THE WITNESS: Based on the -- this</p> <p>13 and the other exhibits presented, I don't have</p> <p>14 any reason to believe that this is not</p> <p>15 accurate.</p> <p>16 MS. GOODMAN: Okay. You can put</p> <p>17 that to the side.</p> <p>18 (Deposition Exhibit 169 was marked</p> <p>19 for identification.)</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. I am handing you 169 ARMY-ADS-69378</p> <p>22 through 379.</p>	<p style="text-align: right;">Page 85</p> <p>1 Foundation.</p> <p>2 THE WITNESS: So in an instance</p> <p>3 like -- like this where there could be an error</p> <p>4 in a particular -- not matching exactly the</p> <p>5 army-approved plan, then there is some room for</p> <p>6 the parties to negotiate on how to resolve.</p> <p>7 26,000 out of 36 million is -- well, 26,000 is</p> <p>8 a lot to me, but it's a fraction of the</p> <p>9 total -- of a total award amount for national</p> <p>10 media.</p> <p>11 And we may determine that it could</p> <p>12 be in our interest to assess that while we've</p> <p>13 still received the benefit, it still got</p> <p>14 actually put into the market. Consumers still</p> <p>15 saw what we were doing even. If it wasn't the</p> <p>16 exact plan that we approved, we can go back and</p> <p>17 say we can work this out or we can stand on no,</p> <p>18 that's your mistake, you eat the cost.</p> <p>19 And that is something that would be</p> <p>20 discussed with the -- with DDB and with the KO</p> <p>21 in general. In this case you have Colonel</p> <p>22 Morris making his opinion known, although he is</p>

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<p>1 not the deciding authority on how we might</p> <p>2 resolve an error.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And when you say that's your</p> <p>5 mistake, you eat the cost, that's something</p> <p>6 that the army could tell one of its contractors</p> <p>7 when it spends outside of what it is authorized</p> <p>8 to spend; is that correct?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Ultimately the</p> <p>11 contractor is responsible for the terms of the</p> <p>12 performance work statement. And the</p> <p>13 contracting officer's representative, in</p> <p>14 surveilling and overseeing the delivery of the</p> <p>15 elements of the performance work statement,</p> <p>16 could make a determination that something was</p> <p>17 or was not met or was or was not delivered</p> <p>18 appropriately or accordingly.</p> <p>19 Ultimately it would be the KO's</p> <p>20 determination, but I believe it to be accurate</p> <p>21 to say that in instances in which a delivery or</p> <p>22 a deliverable or the manner in which something</p>	<p>1 their own operating budget, expenses, profits.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Does the army have a contract with</p> <p>4 Google relative to digital advertising?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 Foundation.</p> <p>7 THE WITNESS: I'm not aware of a</p> <p>8 contract between the army and Google. I</p> <p>9 understand Google is one of the media vendors</p> <p>10 that the army purchases inventory from with the</p> <p>11 facilitation of our media buying agency.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And the facilitation of your media</p> <p>14 buying agency, that includes DDB and its</p> <p>15 subcontractor OMD; is that correct?</p> <p>16 MS. CLEMONS: Objection to form.</p> <p>17 THE WITNESS: The army has a</p> <p>18 contract with DDB. OMD, an affiliate who is a</p> <p>19 subcontractor to DDB does the labor associated</p> <p>20 with the purchase and using whatever it is,</p> <p>21 their media buying service, back to our earlier</p> <p>22 discussion about why they, you know, were</p>
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<p>1 was done, if it did not meet the army's</p> <p>2 requirements per the PWS, that the army, the</p> <p>3 government could refuse payment for something</p> <p>4 that didn't meet -- didn't meet standards.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And when the army -- in such a</p> <p>7 circumstance that the army refuses payment, is</p> <p>8 it the contractor's responsibility to still pay</p> <p>9 the cost to the vendor?</p> <p>10 MS. CLEMONS: Objection. Form.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: It's my</p> <p>13 understanding -- although I think that probably</p> <p>14 gets into some other contract piece that I may</p> <p>15 not be expert, but in my understanding, yes.</p> <p>16 Ultimately DDB made a commitment</p> <p>17 here to their subcontractor who made a</p> <p>18 commitment to a vendor and funds were already</p> <p>19 committed, spent. I'm not sure that they use</p> <p>20 the same sort of budget terms that we use. And</p> <p>21 that in this case, DDB itself could be told</p> <p>22 that they will have to absorb that cost out of</p>	<p>1 awarded the contract by their abilities and</p> <p>2 capabilities system they have to purchase the</p> <p>3 media, to physically conduct the transactions</p> <p>4 and then also to load and traffic and send the</p> <p>5 creative assets to the vendors who are giving</p> <p>6 us the space or whoever, the display area,</p> <p>7 wherever, TV, radio, anything, Internet as</p> <p>8 well, the same.</p> <p>9 And then ultimately though, the</p> <p>10 costs for all of those things are still sent</p> <p>11 back to the army so when we talk about the</p> <p>12 invoice review, the media COR gets the invoice</p> <p>13 from Google or whichever vendor and then</p> <p>14 ultimately has to match that back up to the</p> <p>15 media plan and pays that.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. And in the course of your review of</p> <p>18 invoices in order to prepare for the deposition</p> <p>19 today, you saw that invoices are issued from a</p> <p>20 vendor to OMD, correct?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 Foundation.</p>

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<p>1 THE WITNESS: So actually, as I</p> <p>2 recall, looking at several invoices, the</p> <p>3 invoice still had army as its To. It was</p> <p>4 provided physically or e-mailed physically</p> <p>5 first to OMD, who would collect all of the</p> <p>6 various invoices, bundle them, provide them to</p> <p>7 DDB who reviews, who then would be the</p> <p>8 responsible party for entering that bundled --</p> <p>9 and it could be by a couple weeks, a month,</p> <p>10 whatever the time period may be. Provides that</p> <p>11 bundled set of invoices after their review and</p> <p>12 certification that these do represent to the</p> <p>13 best of their knowledge, true and accurate,</p> <p>14 into the wide area work flow system whereby</p> <p>15 then the COR can see them and then review them</p> <p>16 against the army's approved media plan.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. And so in -- basically, there are a</p> <p>19 few steps, vendor issues invoice to OMD, OMD</p> <p>20 bundles invoices to DDB and then DDB issues</p> <p>21 invoices to the army, correct?</p> <p>22 MS. CLEMONS: Objection to form.</p>	<p>1 context of an approved plan, the discussion is</p> <p>2 and then there is an expectation of what we are</p> <p>3 getting for it as well.</p> <p>4 We don't approve a plan just based</p> <p>5 on dividing up the money. It's also with what</p> <p>6 do we believe we are getting for each of those</p> <p>7 divisions of money on the various products or</p> <p>8 the various inventories, creative deliveries</p> <p>9 that, you know, we may be purchasing in the</p> <p>10 media plan.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Does the army negotiate the price of</p> <p>13 digital media with any vendor?</p> <p>14 MS. CLEMONS: Objection to form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: It depends. There are</p> <p>17 negotiations that occur in the context of</p> <p>18 building out the plan, specifically when we are</p> <p>19 talking -- we're at the level of the tactical</p> <p>20 plan. And there are -- there is more than one</p> <p>21 vendor out there and as we are developing a</p> <p>22 tactical plan, we may receive proposals from</p>
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<p>1 THE WITNESS: So for cost CLIN items</p> <p>2 or in other direct expense, where it is not a</p> <p>3 labor cost and it's not other type of contract</p> <p>4 line item, for a cost CLIN like this. Yeah,</p> <p>5 the vendor issues the invoice, although issues</p> <p>6 to -- it is still to army, but provides the</p> <p>7 physical invoice for routing first through OMD</p> <p>8 and media.</p> <p>9 First through OMD. OMD as the</p> <p>10 affiliate subcontractor then bundles and sends</p> <p>11 to DDB and then DDB personnel are responsible</p> <p>12 for loading them into the wide area work flow.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. Does the army play any direct</p> <p>15 role in negotiating the purchase of any digital</p> <p>16 media?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: The army plays a role</p> <p>19 in that we are the decision authority of what</p> <p>20 gets placed when and where and the amount in</p> <p>21 which we are spending on it. How much we are</p> <p>22 dedicating to, and then of course, in the</p>	<p>1 vendors and in that proposal, hey, this is what</p> <p>2 we can do, here's an example of how we will,</p> <p>3 you know, support you, what we can provide, we</p> <p>4 may or may not like all of the items or they</p> <p>5 may be fantastic but maybe it's too much or</p> <p>6 maybe it's not interesting to us.</p> <p>7 So there is some negotiation from</p> <p>8 the vendor and us as a team between the army,</p> <p>9 the DDB mission task lead and the media for</p> <p>10 this case and the OMD team to review what is</p> <p>11 proposed by a vendor and maybe counter-propose</p> <p>12 or accept or deny altogether until ultimately</p> <p>13 we get to something that we are all comfortable</p> <p>14 that this represents something we are</p> <p>15 interested in and we believe it's at a fair</p> <p>16 price for what is being offered, and then we</p> <p>17 will move towards the actual sort of -- we'll</p> <p>18 book that or we'll approve those items as a</p> <p>19 part of the plan.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Did the army purchase any display</p> <p>22 advertising directly from Google?</p>

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